

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1048

FINAL READING

Introduced by Natural Resources Committee: Langemeier, 23, Chairperson; Carlson, 38; Cook, 13; Dubas, 34; Fischer, 43; Haar, 21; McCoy, 39; Schilz, 47; Mello, 5; Pirsch, 4; Sullivan, 41; Christensen, 44; Flood, 19; White, 8.

Read first time January 21, 2010

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to power generation; to amend sections 70-1001,  
2 70-1001.01, 70-1013, 70-1014, 70-1014.01, 76-710.04,  
3 77-105, 77-202, and 79-1018.01, Reissue Revised Statutes  
4 of Nebraska, and section 13-518, Revised Statutes  
5 Supplement, 2009; to define and redefine terms; to  
6 state intent regarding renewable energy facilities; to  
7 change provisions relating to hearings regarding electric  
8 generation facilities; to provide for approval of  
9 certified renewable export facilities as prescribed; to  
10 change provisions relating to eminent domain; to require  
11 registration and marking of certain wind measurement

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1 equipment; to exempt certain property from property  
2 taxation; to provide for a nameplate capacity tax as  
3 prescribed; to harmonize provisions; to provide a duty  
4 for the Revisor of Statutes; and to repeal the original  
5 sections.

6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 13-518, Revised Statutes Supplement,  
2 2009, is amended to read:

3           13-518 For purposes of sections 13-518 to 13-522:

4           (1) Allowable growth means (a) for governmental units  
5 other than community colleges, the percentage increase in taxable  
6 valuation in excess of the base limitation established under  
7 section 77-3446, if any, due to improvements to real property as  
8 a result of new construction, additions to existing buildings,  
9 any improvements to real property which increase the value of  
10 such property, and any increase in valuation due to annexation  
11 and any personal property valuation over the prior year and (b)  
12 for community colleges, (i) for fiscal years prior to fiscal year  
13 2003-04 and after fiscal year 2004-05 until fiscal year 2007-08,  
14 the percentage increase in excess of the base limitation, if  
15 any, in full-time equivalent students from the second year to  
16 the first year preceding the year for which the budget is being  
17 determined, (ii) for fiscal year 2003-04 and fiscal year 2004-05,  
18 the percentage increase in full-time equivalent students from the  
19 second year to the first year preceding the year for which the  
20 budget is being determined, and (iii) for fiscal year 2007-08 and  
21 each fiscal year thereafter, community college areas may exceed the  
22 base limitation to equal base revenue need calculated pursuant to  
23 section 85-2223;

24           (2) Capital improvements means (a) acquisition of real  
25 property or (b) acquisition, construction, or extension of any

1 improvements on real property;

2 (3) Governing body has the same meaning as in section  
3 13-503;

4 (4) Governmental unit means every political subdivision  
5 which has authority to levy a property tax or authority to  
6 request levy authority under section 77-3443 except sanitary and  
7 improvement districts which have been in existence for five years  
8 or less and school districts;

9 (5) Qualified sinking fund means a fund or funds  
10 maintained separately from the general fund to pay for acquisition  
11 or replacement of tangible personal property with a useful life of  
12 five years or more which is to be undertaken in the future but  
13 is to be paid for in part or in total in advance using periodic  
14 payments into the fund. The term includes sinking funds under  
15 subdivision (13) of section 35-508 for firefighting and rescue  
16 equipment or apparatus;

17 (6) Restricted funds means (a) property tax, excluding  
18 any amounts refunded to taxpayers, (b) payments in lieu of property  
19 taxes, (c) local option sales taxes, (d) motor vehicle taxes, (e)  
20 state aid, (f) transfers of surpluses from any user fee, permit  
21 fee, or regulatory fee if the fee surplus is transferred to fund  
22 a service or function not directly related to the fee and the  
23 costs of the activity funded from the fee, (g) any funds excluded  
24 from restricted funds for the prior year because they were budgeted  
25 for capital improvements but which were not spent and are not

1 expected to be spent for capital improvements, (h) the tax provided  
2 in sections 77-27,223 to 77-27,227 beginning in the second fiscal  
3 year in which the county will receive a full year of receipts,  
4 and (i) any excess tax collections returned to the county under  
5 section 77-1776. Funds received pursuant to the nameplate capacity  
6 tax levied under section 14 of this act for the first five years  
7 after a wind energy generation facility has been commissioned are  
8 nonrestricted funds; and

9 (7) State aid means:

10 (a) For all governmental units, state aid paid pursuant  
11 to sections 60-3,202 and 77-3523;

12 (b) For municipalities, state aid to municipalities  
13 paid pursuant to sections 18-2605, 39-2501 to 39-2520, 60-3,190,  
14 77-27,136, and 77-27,139.04 and insurance premium tax paid to  
15 municipalities;

16 (c) For counties, (i) until July 1, 2011, state aid to  
17 counties paid pursuant to sections 39-2501 to 39-2520, 47-119.01,  
18 60-3,184 to 60-3,190, 77-27,136, and 77-3618, insurance premium  
19 tax paid to counties, and reimbursements to counties from funds  
20 appropriated pursuant to section 29-3933, and (ii) beginning on  
21 July 1, 2011, state aid to counties paid pursuant to sections  
22 39-2501 to 39-2520, 60-3,184 to 60-3,190, and 77-27,137.03,  
23 insurance premium tax paid to counties, and reimbursements to  
24 counties from funds appropriated pursuant to section 29-3933;

25 (d) For community colleges, state aid to community

1 colleges paid under the Community College Foundation and  
2 Equalization Aid Act;

3 (e) For natural resources districts, state aid to natural  
4 resources districts paid pursuant to section 77-27,136;

5 (f) For educational service units, state aid appropriated  
6 under sections 79-1241.01 to 79-1241.03; and

7 (g) For local public health departments as defined in  
8 section 71-1626, state aid as distributed under section 71-1628.08.

9 Sec. 2. Section 70-1001, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 70-1001 In order to provide the citizens of the state  
12 with adequate electric service at as low overall cost as possible,  
13 consistent with sound business practices, it is the policy of  
14 this state to avoid and eliminate conflict and competition between  
15 public power districts, public power and irrigation districts,  
16 individual municipalities, registered groups of municipalities,  
17 electric membership associations, and cooperatives in furnishing  
18 electric energy to retail and wholesale customers, to avoid and  
19 eliminate the duplication of facilities and resources which result  
20 therefrom, and to facilitate the settlement of rate disputes  
21 between suppliers of electricity.

22 It is also the policy of the state to prepare for an  
23 evolving retail electricity market if certain conditions are met  
24 which indicate that retail competition is in the best interests of  
25 the citizens of the state. The determination on the timing and form

1 of competitive markets is a matter properly left to the states as  
2 each state must evaluate the costs and benefits of a competitive  
3 retail market based on its own unique conditions. Consequently,  
4 there is a need for the ~~State of Nebraska~~ state to monitor whether  
5 the conditions necessary for its citizens to benefit from retail  
6 competition exist.

7 It is also the policy of the state to encourage and  
8 allow opportunities for private developers to develop, own, and  
9 operate renewable energy facilities intended primarily for export  
10 from the state under a statutory framework which protects the  
11 ratepayers of consumer-owned utility systems operating in the state  
12 from subsidizing the costs of such export facilities through their  
13 rates.

14 Sec. 3. Section 70-1001.01, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 70-1001.01 For purposes of sections 70-1001 to 70-1027  
17 and section 6 of this act, unless the context otherwise requires:

18 (1) Board means the Nebraska Power Review Board;

19 (2) Certified renewable export facility means a facility  
20 approved under section 6 of this act that (a) will generate  
21 electricity using solar, wind, biomass, or landfill gas, (b) will  
22 be constructed and owned by an entity other than a municipality,  
23 a registered group of municipalities, a public power district,  
24 a public power and irrigation district, an electric cooperative,  
25 an electric membership association, or any other governmental

1 entity, and (c) has a power purchase or similar agreement or  
2 agreements with an initial term of ten years or more for the  
3 sale of at least ninety percent of the output of the facility  
4 with a customer or customers located outside the State of Nebraska  
5 and maintains such an agreement or agreements for the life of  
6 the facility. Output sold pursuant to subdivision (2)(a)(iv) of  
7 section 6 of this act shall not be included when calculating  
8 such ninety percent. Certified renewable export facility includes  
9 all generating equipment, easements, and interconnection equipment  
10 within the facility and connecting the facility to the transmission  
11 grid;

12           ~~(2)~~ (3) Electric suppliers or suppliers of electricity  
13 means any legal entity supplying, producing, or distributing  
14 electricity within the state for sale at wholesale or retail;

15           ~~(3)~~ (4) Regional transmission organization means an  
16 entity independent from those entities generating or marketing  
17 electricity at wholesale or retail, which has operational control  
18 over the electric transmission lines in a designated geographic  
19 area in order to reduce constraints in the flow of electricity and  
20 ensure that all power suppliers have open access to transmission  
21 lines for the transmission of electricity;

22           ~~(4)~~ (5) Representative organization means an organization  
23 designated by the board and organized for the purpose of  
24 providing joint planning and encouraging maximum cooperation and  
25 coordination among electric suppliers. Such organization shall



1 represent electric suppliers owning a combined electric generation  
 2 plant capacity of at least ninety percent of the total electric  
 3 generation plant capacity constructed and in operation within the  
 4 state;

5 ~~(5)~~ (6) State means the State of Nebraska; and

6 (7) Stranded asset means a generation or transmission  
 7 facility owned by an electric supplier as defined in subsection (1)  
 8 of section 6 of this act which cannot earn a favorable economic  
 9 return due to regulatory or legislative actions or changes in the  
 10 market and, at the time an application is filed with the board  
 11 under such section, either exists or has been approved by the board  
 12 or the governing body of an electric supplier as defined in such  
 13 subsection; and

14 ~~(6)~~ (8) Unbundled retail rates means the separation of  
 15 utility bills into the individual price components for which an  
 16 electric supplier charges its retail customers, including, but not  
 17 limited to, the separate charges for the generation, transmission,  
 18 and distribution of electricity.

19 Sec. 4. Section 70-1013, Reissue Revised Statutes of  
 20 Nebraska, is amended to read:

21 70-1013 Upon application being filed under section  
 22 70-1012, the board shall fix a time and place for hearing and shall  
 23 give ten days' notice by mail to such ~~alternate~~ power suppliers  
 24 as it deems to be affected by the application. The hearing shall  
 25 be ~~had held~~ within ~~thirty~~ sixty days unless for good cause shown~~7~~

1 the applicant ~~shall request~~ requests in writing that such hearing  
2 not be scheduled until a later time, but in any event such hearing  
3 shall be held not be more than ~~ninety~~ one hundred twenty days  
4 from the filing of the application, and the board shall give its  
5 decision within ~~thirty~~ sixty days after the conclusion of the  
6 hearing. Any parties interested may appear, file objections, and  
7 offer evidence. The ~~Provided~~, the board may grant the application  
8 without notice or hearing, upon the filing of such waivers as it  
9 may require, if in its judgment the finding required by section  
10 70-1014 can be made without a hearing. Such hearing shall be  
11 conducted as provided in section 70-1006. The board may allow  
12 amendments to the application, in the interests of justice.

13           Sec. 5. Section 70-1014, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           70-1014 After hearing, the board shall have authority  
16 to approve or deny the application. Except as provided in  
17 section 70-1014.01 for special generation applications and except  
18 as provided in section 6 of this act, before approval of an  
19 application, the board shall find that the application will serve  
20 the public convenience and necessity, and that the applicant  
21 can most economically and feasibly supply the electric service  
22 resulting from the proposed construction or acquisition, without  
23 unnecessary duplication of facilities or operations.

24           Sec. 6. (1) For purposes of this section, electric  
25 supplier means a public power district, a public power and

1 irrigation district, an individual municipality, a registered  
2 group of municipalities, an electric membership association, or  
3 a cooperative.

4 (2)(a) The board shall conditionally approve an  
5 application for a certified renewable export facility if it  
6 finds that only the criteria described in subdivisions (a)(i)  
7 through (iv) of this subsection are met: (i) The facility will  
8 provide reasonably identifiable and quantifiable public benefits,  
9 including economic development, to the residents of Nebraska or the  
10 local area where the facility will be located; (ii) the facility  
11 meets the requirements of subdivisions (2)(a) and (b) of section  
12 70-1001.01; (iii) the facility has a memorandum of understanding  
13 or other written evidence of mutual intent to negotiate a power  
14 purchase agreement or agreements with a purchaser or purchasers  
15 outside the State of Nebraska for at least ninety percent of  
16 the output of the facility for ten years or more; and (iv)  
17 the applicant offers electric suppliers serving loads greater  
18 than fifty megawatts at the time the initial application is  
19 filed an option to purchase in the aggregate an amount of power  
20 up to ten percent of the output of any facility with greater  
21 than eighty megawatts of nameplate capacity contingent upon the  
22 applicant and electric suppliers negotiating in good faith a  
23 power purchase agreement and any other necessary agreements. Such  
24 electric suppliers shall be entitled to a minimum of their pro  
25 rata share based on the load ratio share of Nebraska electric

1 load served among those electric suppliers eligible under this  
2 subdivision (iv). If an electric supplier declines to contract  
3 for some or all of its pro rata share, the remaining eligible  
4 electric suppliers may share the balance on a pro rata basis.  
5 The ten percent may be above the total generation amount proposed  
6 in the application for a certified renewable export facility and  
7 shall require no separate approval by the board. Any transmission  
8 studies, additions, or upgrades due to participation by electric  
9 suppliers serving loads greater than fifty megawatts shall be  
10 the responsibility of the participating electric supplier. Upon  
11 receiving the initial application under this section, the board  
12 shall notify electric suppliers identified in this subdivision  
13 (iv) of a pending application with a nameplate capacity greater  
14 than eighty megawatts. Such suppliers shall have forty-five days  
15 following the date of the board's notice to notify the applicant of  
16 an interest in exercising the option to purchase power, except that  
17 such suppliers may withdraw their option to purchase power once the  
18 costs of the transmission additions and upgrades are determined.  
19 Electric suppliers withdrawing their option to purchase power  
20 are responsible for their pro rata share of any costs resulting  
21 from their participation in and withdrawal from the generation  
22 interconnection and transmission delivery studies.

23 (b) Following the board's conditional approval of an  
24 application under subdivision (a) of this subsection, the applicant  
25 shall notify the board within eighteen months that it is prepared

1 to proceed to consideration of the criteria in subdivision (c) of  
2 this subsection. The board may extend such eighteen-month deadline  
3 not more than twelve additional months for good cause shown. If the  
4 applicant fails to notify the board within such time that it is so  
5 prepared, the conditional approval granted under this subdivision  
6 is void.

7 (c) Upon finding that the criteria described in  
8 subdivisions (c)(i) through (viii) of this subsection have also  
9 been met by the applicant and after the board has fulfilled the  
10 requirements of subsection (3) of section 37-807, the board shall  
11 grant final approval of an application for a certified renewable  
12 export facility:

13 (i) The facility will not have a materially detrimental  
14 effect on the retail electric rates paid by any Nebraska  
15 ratepayers, except that, notwithstanding subdivisions (c)(v) and  
16 (vi) of this subsection, the determination of a materially  
17 detrimental effect on rates shall not include regional transmission  
18 improvements dictated by a regional transmission operator or  
19 transmission improvements required due to participation by an  
20 eligible entity pursuant to subdivision (2)(a)(iv) of this section;

21 (ii) The applicant has obtained the necessary generation  
22 interconnection and transmission service approvals from and  
23 has executed agreements for such generation interconnection and  
24 transmission service with the appropriate regional transmission  
25 organization, transmission owner, or transmission provider;

1           (iii) There has been no demonstration that the proposed  
2 facility will result in a substantial risk of creating stranded  
3 assets;

4           (iv) The applicant has certified that it has applied for  
5 and is actively pursuing the required approvals from any other  
6 federal, state, or local entities with jurisdiction or permitting  
7 authority over the certified renewable export facility;

8           (v) The applicant and the electric supplier owning the  
9 transmission facilities to which the certified renewable export  
10 facility will be interconnected, along with any electric supplier  
11 which owns transmission facilities of one hundred fifteen thousand  
12 volts or more and is required to receive notice pursuant to  
13 section 70-1013, have entered into a joint transmission development  
14 agreement on reasonable terms and conditions consistent with  
15 and subject to the notice to construct or other directives of  
16 any regional transmission organization with jurisdiction over  
17 the addition or upgrade to transmission facilities or, for any  
18 electric supplier that is not a member of a regional transmission  
19 organization with which the facility will interconnect, covers  
20 the addition or upgrade to transmission facilities required  
21 as a result of the certified renewable export facility. Such  
22 joint transmission development agreement shall include provisions  
23 addressing construction, ownership, operation, and maintenance of  
24 such additions or upgrades to transmission facilities. The electric  
25 supplier or suppliers shall have the right to purchase and own

1 transmission facilities as set forth in the joint transmission  
2 development agreement;

3 (vi) The applicant agrees to reimburse any costs that are  
4 not covered by a regional transmission organization tariff or that  
5 are allocated through the tariff to the electric suppliers as a  
6 result of the certified renewable export facility or not covered  
7 by the tariff of a transmission owner or transmission provider  
8 that is not a member of a regional transmission organization,  
9 costs incurred by any electric supplier as a result of adding the  
10 certified renewable export facility, including, but not limited  
11 to, renewable integration costs, and costs which allow the  
12 interconnected electric supplier to operate and maintain the  
13 transmission facilities under reasonable terms and conditions  
14 agreed to by the parties within the joint transmission development  
15 agreement;

16 (vii) The applicant shall submit a decommissioning  
17 plan. The applicant or owner of the facility shall establish  
18 decommissioning security by posting an instrument, a copy of which  
19 is given to the board, no later than the tenth year following  
20 final approval of the facility to ensure sufficient funding is  
21 available for removal of the facility and reclamation at the end of  
22 the useful life of such facility pursuant to the decommissioning  
23 plan. The owner of the certified renewable export facility shall  
24 be solely responsible for decommissioning. If the applicant or any  
25 subsequent owner of the facility intends to transfer ownership of

1 the facility, the proposed new owner shall provide the board with  
2 adequate evidence demonstrating that substitute decommissioning  
3 security has been posted or given prior to transfer of ownership.  
4 The requirements of this subdivision (vii) shall be waived if a  
5 local governmental entity with authority to create requirements for  
6 decommissioning has enacted decommissioning requirements for the  
7 applicable jurisdiction; and

8 (viii) The facility meets the requirements of  
9 subdivisions (2)(a) through (c) of section 70-1001.01.

10 (3) If the applicant does not commence construction of  
11 the certified renewable export facility within eighteen months  
12 after receiving final approval from the board under subsection (2)  
13 of this section, the approval is void. Upon written request filed  
14 by the applicant, the board may, for good cause shown, extend the  
15 time period during which an approval will remain valid. Good cause  
16 includes, but is not limited to, national or regional economic  
17 conditions, lack of transmission infrastructure, or an applicant's  
18 inability to obtain authorization from other required governmental  
19 regulatory authorities despite the applicant's exercise of a  
20 good-faith effort to obtain such approvals.

21 (4) The applicant shall remit an application fee of five  
22 thousand dollars with the application. The fee shall be remitted  
23 to the State Treasurer for credit to the Nebraska Power Review  
24 Fund. The board shall use the application fee to defray the board's  
25 reasonable expenses associated with reviewing and acting upon the



1 application, including the costs of the hearing. If the board  
2 incurs expenses of more than five thousand dollars associated with  
3 the application, the board shall provide written notification to  
4 the applicant of the additional sum needed or already expended,  
5 after which the applicant shall promptly submit an additional sum  
6 sufficient to cover the board's anticipated or incurred expenses  
7 or shall file an objection with the board. If, after completion of  
8 the application process and any subsequent legal action, including  
9 appeal of the board's decision, the board's expenses associated  
10 with processing and acting upon the application do not equal the  
11 amount submitted by the applicant, the board shall return the  
12 unused funds to the applicant if the amount is fifty dollars or  
13 more. The applicant shall reimburse the board for any reasonable  
14 expenses the board incurs as a result of an appeal of the board's  
15 decision or shall file an objection with the board. The board shall  
16 rule on any objection brought pursuant to this subsection within  
17 thirty days. The applicant may request a hearing on its objection,  
18 in which case the board shall hold such hearing within thirty days  
19 after the request and shall rule within forty-five days after the  
20 hearing.

21 (5) No facility or part of a facility which is a  
22 certified renewable export facility is subject to eminent domain by  
23 an electric supplier or by any other entity if the purpose of the  
24 eminent domain proceeding is to acquire the facility for electric  
25 generation or transmission.

1           (6) Except as provided in subsection (5) of this section,  
2 only an electric supplier may exercise its eminent domain authority  
3 to acquire the land rights necessary for the construction of  
4 transmission lines and related facilities to provide transmission  
5 services for a certified renewable export facility. The exercise  
6 of eminent domain to provide needed transmission lines and related  
7 facilities for a certified renewable export facility is a public  
8 use. Nothing in this section shall be construed to grant the power  
9 of eminent domain to a private entity.

10           (7) If any transmission facilities serving a certified  
11 renewable export facility are proposed to cross the service area  
12 of any electric supplier which owns transmission facilities of one  
13 hundred fifteen thousand volts or more and is required to receive  
14 notice pursuant to section 70-1013, then such electric supplier may  
15 elect to be a party to a joint transmission development agreement  
16 for such transmission facilities.

17           (8) If a certified renewable export facility no longer  
18 meets the requirements of subdivisions (2)(a) through (c) of  
19 section 70-1001.01, the owner of the facility shall notify  
20 the board. An electric supplier or a governmental entity with  
21 regulatory jurisdiction over the certified renewable export  
22 facility may apply to the board or the board may file its  
23 own motion to have the certification of a certified renewable  
24 export facility revoked upon a showing by the applicant for  
25 decertification that the facility no longer meets the requirements

1 of such subdivisions. Upon the filing of such application  
2 and making of a prima facie showing by the applicant for  
3 decertification that the facility no longer meets the requirements  
4 of such subdivisions, the board shall set the matter for hearing.  
5 The hearing shall be held within forty-five days unless an  
6 extension is necessary for good cause shown. The applicant for  
7 decertification shall have the burden of proof. Within forty-five  
8 days after the conclusion of the hearing, the board shall enter  
9 an order to either reaffirm the facility's status as a certified  
10 renewable export facility or to revoke the certification. During  
11 the pendency of the application for decertification and before the  
12 board's final order on decertification, the facility may continue  
13 to operate if the electricity generated at the facility is sold to  
14 customers outside the State of Nebraska, or to an electric supplier  
15 pursuant to a power purchase agreement or similar agreement. The  
16 board shall retain jurisdiction over the decertification action for  
17 at least thirty days after entry of such an order. Within thirty  
18 days after a final order revoking certification, the owner of the  
19 facility may apply for recertification, with the time period for  
20 recertification being no longer than one year unless the board  
21 extends the time period for good cause shown. Such application  
22 for recertification shall extend the board's jurisdiction over the  
23 decertification action until the board completes its review of  
24 the application for recertification and enters an order granting  
25 or denying the application. If the applicant for recertification

1 demonstrates to the board that it is working diligently and in  
2 good faith to restore its compliance with subdivisions (2)(a)  
3 through (c) of section 70-1001.01, the board shall not terminate  
4 the application for recertification. During the pendency of the  
5 application for recertification and before the board's final order  
6 on recertification, the facility may continue to operate if the  
7 electricity generated at the facility is sold to customers outside  
8 the state, or to an electric supplier pursuant to a power purchase  
9 agreement or similar agreement. If the board retains jurisdiction  
10 over the decertification action, the prohibition on eminent domain  
11 set forth in subsection (5) of this section shall remain in full  
12 force and effect. If the board enters an order decertifying a  
13 certified renewable export facility and such order becomes final  
14 due to a failure to timely seek recertification or judicial review,  
15 the prohibition on eminent domain set forth in subsection (5) of  
16 this section shall no longer apply. Nothing in this section shall  
17 prohibit a decertified facility from being recertified in the same  
18 manner as a new facility.

19           Sec. 7. Section 70-1014.01, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           70-1014.01 (1) Except as provided in subsection (2)  
22 of this section, an application by a municipality, a registered  
23 group of municipalities, a public power district, a public power  
24 and irrigation district, an electric cooperative, an electric  
25 membership association, or any other governmental entity, for

1 a facility that will generate not more than ten thousand  
2 kilowatts of electric energy at rated capacity and will generate  
3 electricity using solar, wind, biomass, landfill gas, methane gas,  
4 or hydropower generation technology or an emerging generation  
5 technology, including, but not limited to, fuel cells and  
6 micro-turbines, shall be deemed a special generation application.  
7 Such application shall be approved by the board if the board  
8 finds that (a) the application qualifies as a special generation  
9 application, (b) the application will provide public benefits  
10 sufficient to warrant approval of the application, although it  
11 may not constitute the most economically feasible generation  
12 option, and (c) the application under consideration represents a  
13 separate and distinct project from any previous special generation  
14 application the applicant may have filed.

15 (2)(a) An application by a municipality, a registered  
16 group of municipalities, a public power district, a public power  
17 and irrigation district, an electric cooperative, an electric  
18 membership association, or any other governmental entity for a  
19 facility that will generate more than ten thousand kilowatts of  
20 electric energy at rated capacity and will generate electricity  
21 using renewable energy sources such as solar, wind, biomass,  
22 landfill gas, methane gas, or new hydropower generation technology  
23 or an emerging technology, including, but not limited to, fuel  
24 cells and micro-turbines, may be filed with the board if (i)  
25 the total production from all such renewable projects, excluding

1 sales from such projects to other electric-generating entities,  
2 does not exceed ten percent of total energy sales as shown in  
3 the producer's Annual Electric Power Industry Report to the United  
4 States Department of Energy and (ii) the applicant's governing body  
5 conducts at least one advertised public hearing which affords the  
6 ratepayers of the applicant a chance to review and comment on the  
7 subject of the application.

8 (b) The application shall be approved by the board if  
9 the board finds that (i) the applicant is using renewable energy  
10 sources described in this subsection, (ii) total production from  
11 all renewable projects of the applicant does not exceed ten percent  
12 of the producer's total energy sales as described in subdivision  
13 (2)(a) of this section, and (iii) the applicant's governing body  
14 has conducted at least one advertised public hearing which affords  
15 its ratepayers a chance to review and comment on the subject of the  
16 application.

17 (3) A community-based energy development project  
18 organized pursuant to the Rural Community-Based Energy Development  
19 Act which intends to develop renewable energy sources for sale to  
20 one or more Nebraska electric utilities described in this section  
21 may also make an application to the board pursuant to subsection  
22 (2) of this section if (a) the purchasing electric utilities  
23 conduct a public hearing described in such subsection and (b)  
24 the power and energy from the renewable energy sources is sold  
25 exclusively to such electric utilities for a term of at least

1 twenty years.

2 (4) No facility or part of a facility which is approved  
3 pursuant to this section is subject to eminent domain by any  
4 electric supplier, or by any other entity if the purpose of the  
5 eminent domain proceeding is to acquire the facility for electric  
6 generation or transmission.

7 Sec. 8. (1) All wind measurement equipment associated  
8 with the development or study of wind-powered electric generation,  
9 whether owned or leased, shall be registered with the Department  
10 of Aeronautics if the equipment is at least fifty feet in height  
11 above the ground and is located outside the boundaries of any  
12 incorporated city or village.

13 (2) (a) On or before January 1, 2013, all such equipment  
14 installed prior to the effective date of this act shall be either  
15 lighted, marked with balls at least twenty-one inches in diameter,  
16 painted, or modified in some other manner so it is recognizable in  
17 clear air during daylight hours from a distance of not less than  
18 two thousand feet.

19 (b) All such equipment installed on or after the  
20 effective date of this act shall be either lighted or painted.

21 (3) The person or firm that owns or leases equipment  
22 described in subsection (1) of this section shall register it  
23 within fifteen days after the effective date of this act in the  
24 case of equipment installed before such date or within thirty  
25 days after installation in the case of equipment installed on or

1 after such date. Such registration shall include the equipment's  
 2 exact location and height above the ground, the name of the  
 3 person or firm registering the equipment, the method used to make  
 4 the equipment recognizable as provided in subsection (2) of this  
 5 section, and the name and telephone number of a contact person  
 6 for any issues related to such equipment. Within five days after  
 7 receiving such registration, the department shall make all data  
 8 included in the registration available to the public.

9           (4) Any person or firm that removes equipment subject  
 10 to the registration requirements of this section shall report the  
 11 removal to the department within thirty days after such removal.

12           Sec. 9. Section 76-710.04, Reissue Revised Statutes of  
 13 Nebraska, is amended to read:

14           76-710.04 (1) A condemner may not take property through  
 15 the use of eminent domain under sections 76-704 to 76-724 if the  
 16 taking is primarily for an economic development purpose.

17           (2) For purposes of this section, economic development  
 18 purpose means taking property for subsequent use by a commercial  
 19 for-profit enterprise or to increase tax revenue, tax base,  
 20 employment, or general economic conditions.

21           (3) This section does not affect the use of eminent  
 22 domain for:

23           (a) Public projects or private projects that make all  
 24 or a major portion of the property available for use by the  
 25 general public or for use as a right-of-way, aqueduct, pipeline,



1 transmission line, or similar use;

2 (b) Removing harmful uses of property if such uses  
3 constitute an immediate threat to public health and safety;

4 (c) Leasing property to a private person who occupies an  
5 incidental part of public property or a public facility, such as a  
6 retail establishment on the ground floor of a public building;

7 (d) Acquiring abandoned property;

8 (e) Clearing defective property title;

9 (f) Taking private property for use by a utility or  
10 railroad; ~~and~~

11 (g) Taking private property based upon a finding of  
12 blighted or substandard conditions under the Community Development  
13 Law if the private property is not agricultural land or  
14 horticultural land as defined in section 77-1359; ~~and-~~

15 (h) Taking private property for a transmission line to  
16 serve a privately developed facility generating electricity using  
17 wind, solar, biomass, or landfill gas. Nothing in this subdivision  
18 shall be construed to grant the power of eminent domain to a  
19 private entity.

20 Sec. 10. Section 77-105, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 77-105 The term tangible personal property includes all  
23 personal property possessing a physical existence, excluding money.  
24 The term tangible personal property also includes trade fixtures,  
25 which means machinery and equipment, regardless of the degree

1 of attachment to real property, used directly in commercial,  
2 manufacturing, or processing activities conducted on real property,  
3 regardless of whether the real property is owned or leased, and  
4 all property used in the generation of electricity using wind as  
5 the fuel source, including, but not limited to, that listed in  
6 subsection (9) of section 77-202. The term intangible personal  
7 property includes all other personal property, including money.

8           Sec. 11. Section 77-202, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           77-202 (1) The following property shall be exempt from  
11 property taxes:

12           (a) Property of the state and its governmental  
13 subdivisions to the extent used or being developed for use by  
14 the state or governmental subdivision for a public purpose. For  
15 purposes of this subdivision, public purpose means use of the  
16 property (i) to provide public services with or without cost to the  
17 recipient, including the general operation of government, public  
18 education, public safety, transportation, public works, civil and  
19 criminal justice, public health and welfare, developments by a  
20 public housing authority, parks, culture, recreation, community  
21 development, and cemetery purposes, or (ii) to carry out the  
22 duties and responsibilities conferred by law with or without  
23 consideration. Public purpose does not include leasing of property  
24 to a private party unless the lease of the property is at fair  
25 market value for a public purpose. Leases of property by a public

1 housing authority to low-income individuals as a place of residence  
2 are for the authority's public purpose;

3 (b) Unleased property of the state or its governmental  
4 subdivisions which is not being used or developed for use for  
5 a public purpose but upon which a payment in lieu of taxes is  
6 paid for public safety, rescue, and emergency services and road  
7 or street construction or maintenance services to all governmental  
8 units providing such services to the property. Except as provided  
9 in Article VIII, section 11, of the Constitution of Nebraska,  
10 the payment in lieu of taxes shall be based on the proportionate  
11 share of the cost of providing public safety, rescue, or emergency  
12 services and road or street construction or maintenance services  
13 unless a general policy is adopted by the governing body of the  
14 governmental subdivision providing such services which provides for  
15 a different method of determining the amount of the payment in  
16 lieu of taxes. The governing body may adopt a general policy by  
17 ordinance or resolution for determining the amount of payment in  
18 lieu of taxes by majority vote after a hearing on the ordinance  
19 or resolution. Such ordinance or resolution shall nevertheless  
20 result in an equitable contribution for the cost of providing such  
21 services to the exempt property;

22 (c) Property owned by and used exclusively for  
23 agricultural and horticultural societies;

24 (d) Property owned by educational, religious, charitable,  
25 or cemetery organizations, or any organization for the exclusive

1 benefit of any such educational, religious, charitable, or cemetery  
2 organization, and used exclusively for educational, religious,  
3 charitable, or cemetery purposes, when such property is not  
4 (i) owned or used for financial gain or profit to either the  
5 owner or user, (ii) used for the sale of alcoholic liquors for  
6 more than twenty hours per week, or (iii) owned or used by  
7 an organization which discriminates in membership or employment  
8 based on race, color, or national origin. For purposes of this  
9 subdivision, educational organization means (A) an institution  
10 operated exclusively for the purpose of offering regular courses  
11 with systematic instruction in academic, vocational, or technical  
12 subjects or assisting students through services relating to the  
13 origination, processing, or guarantying of federally reinsured  
14 student loans for higher education or (B) a museum or historical  
15 society operated exclusively for the benefit and education of the  
16 public. For purposes of this subdivision, charitable organization  
17 means an organization operated exclusively for the purpose of the  
18 mental, social, or physical benefit of the public or an indefinite  
19 number of persons; and

20 (e) Household goods and personal effects not owned or  
21 used for financial gain or profit to either the owner or user.

22 (2) The increased value of land by reason of shade and  
23 ornamental trees planted along the highway shall not be taken into  
24 account in the valuation of land.

25 (3) Tangible personal property which is not depreciable

1 tangible personal property as defined in section 77-119 shall be  
2 exempt from property tax.

3 (4) Motor vehicles required to be registered for  
4 operation on the highways of this state shall be exempt from  
5 payment of property taxes.

6 (5) Business and agricultural inventory shall be exempt  
7 from the personal property tax. For purposes of this subsection,  
8 business inventory includes personal property owned for purposes  
9 of leasing or renting such property to others for financial gain  
10 only if the personal property is of a type which in the ordinary  
11 course of business is leased or rented thirty days or less and  
12 may be returned at the option of the lessee or renter at any time  
13 and the personal property is of a type which would be considered  
14 household goods or personal effects if owned by an individual. All  
15 other personal property owned for purposes of leasing or renting  
16 such property to others for financial gain shall not be considered  
17 business inventory.

18 (6) Any personal property exempt pursuant to subsection  
19 (2) of section 77-4105 or section 77-5209.02 shall be exempt from  
20 the personal property tax.

21 (7) Livestock shall be exempt from the personal property  
22 tax.

23 (8) Any personal property exempt pursuant to the Nebraska  
24 Advantage Act shall be exempt from the personal property tax.

25 (9) Any property used directly in the generation of

1 electricity using wind as the fuel source shall be exempt  
2 from the property tax. Personal property used directly in the  
3 generation of electricity using wind as the fuel source includes,  
4 but is not limited to, wind turbines, rotors and blades,  
5 towers, trackers, generating equipment, transmission components,  
6 substations, supporting structures or racks, inverters, and other  
7 system components such as wiring, control systems, switchgears, and  
8 generator step-up transformers.

9           Sec. 12. The Legislature finds and declares:

10           (1) The purpose of the nameplate capacity tax levied  
11 under section 14 of this act is to replace property taxes currently  
12 imposed on wind infrastructure and depreciated over a short period  
13 of time in a way that causes local budgeting challenges and  
14 increases upfront costs for wind developers;

15           (2) The nameplate capacity tax should be competitive  
16 with taxes imposed directly and indirectly on wind generation and  
17 development in other states;

18           (3) The nameplate capacity tax should be fair and  
19 nondiscriminatory when compared with other taxes imposed on other  
20 industries in the state; and

21           (4) The nameplate capacity tax should not be singled  
22 out as a source of General Fund revenue during times of economic  
23 hardship.

24           Sec. 13. For purposes of sections 12 to 15 of this act:

25           (1) Commissioned means the wind turbine of a wind

1 generation facility has been in commercial operation for at least  
2 twenty-four hours. A wind turbine is not in commercial operation  
3 unless the wind energy generation facility is connected to the  
4 electrical grid;

5 (2) Nameplate capacity means the capacity of a wind  
6 turbine to generate electricity as measured in megawatts, including  
7 fractions of a megawatt; and

8 (3) Wind energy generation facility means a facility that  
9 generates electricity using wind as the fuel source.

10 Sec. 14. (1) The owner of a wind energy generation  
11 facility annually shall pay a nameplate capacity tax equal to the  
12 total nameplate capacity of the commissioned wind turbine of the  
13 wind energy generation facility multiplied by a tax rate of three  
14 thousand five hundred eighteen dollars per megawatt.

15 (2) No tax shall be imposed on a wind energy generation  
16 facility:

17 (a) Owned or operated by the federal government, the  
18 State of Nebraska, a public power district, a public power and  
19 irrigation district, an individual municipality, a registered  
20 group of municipalities, an electric membership association, or  
21 a cooperative; or

22 (b) That is a customer-generator as defined in section  
23 70-2002.

24 (3) No tax levied pursuant to this section shall be  
25 construed to constitute restricted funds as defined in section

1 13-518 for the first five years after the wind energy generation  
2 facility is commissioned.

3 (4) The presence of one or more wind energy generation  
4 facilities or supporting infrastructure shall not be a factor in  
5 the assessment, determination of actual value, or classification  
6 under section 77-201 of the real property underlying or adjacent to  
7 such facilities or infrastructure.

8 (5) (a) The Department of Revenue shall collect the tax  
9 due under this section.

10 (b) The tax shall be imposed beginning the first calendar  
11 year the wind turbine is commissioned. A wind energy generation  
12 facility commissioned prior to the effective date of this act shall  
13 be subject to the tax levied pursuant to sections 12 to 15 of  
14 this act on and after January 1, 2010. The amount of property tax  
15 previously paid on a wind energy generation facility commissioned  
16 prior to the effective date of this act which is greater than the  
17 amount that would have been paid pursuant to sections 12 to 15  
18 of this act from the date of commissioning until January 1, 2010,  
19 shall be credited against any tax due under Chapter 77, and any  
20 amount so credited that is unused in any tax year shall be carried  
21 over to subsequent tax years until fully utilized.

22 (c) (i) The tax for the first calendar year shall be  
23 prorated based upon the number of days remaining in the calendar  
24 year after the wind turbine is commissioned.

25 (ii) In the first year in which a wind energy generation



1 facility is taxed or in any year in which additional commissioned  
2 nameplate capacity is added to a wind energy generation facility,  
3 the taxes on the initial or additional nameplate capacity shall be  
4 prorated for the number of days remaining in the calendar year.

5 (iii) When a wind turbine is decommissioned or made  
6 nonoperational by a change in law or decertification from its  
7 status as a certified renewable export facility during a tax year,  
8 the taxes shall be prorated for the number of days during which the  
9 wind turbine was not decommissioned or was operational.

10 (iv) When the capacity of a wind turbine to produce  
11 electricity is reduced but the wind turbine is not decommissioned,  
12 the nameplate capacity of the wind turbine is deemed to be  
13 unchanged.

14 (6) (a) On March 1 of each year, the owner of a wind  
15 energy generation facility shall file with the Department of  
16 Revenue a report on the nameplate capacity of the facility for  
17 the previous year from January 1 through December 31. All taxes  
18 shall be due on April 1 and shall be delinquent if not paid on a  
19 quarterly basis on April 1 and each quarter thereafter. Delinquent  
20 quarterly payments shall draw interest at the rate provided for in  
21 section 45-104.02, as such rate may from time to time be adjusted.

22 (b) The owner of a wind energy generation facility is  
23 liable for the taxes under this section with respect to the  
24 facility, whether or not the owner of the facility is the owner of  
25 the land on which the facility is situated.

1           (7) Failure to file a report required by subsection (6)  
2 of this section, filing such report late, failure to pay taxes due,  
3 or underpayment of such taxes shall result in a penalty of five  
4 percent of the amount due being imposed for each quarter the report  
5 is overdue or the payment is delinquent, except that the penalty  
6 shall not exceed ten thousand dollars.

7           (8) The Department of Revenue shall enforce the  
8 provisions of this section. The department shall adopt and  
9 promulgate rules and regulations necessary for the implementation  
10 and enforcement of this section.

11           (9) The Department of Revenue shall separately identify  
12 the proceeds from the tax imposed by this section and shall pay all  
13 such proceeds over to the county treasurer of the county where the  
14 wind energy generation facility is located within thirty days after  
15 receipt of such proceeds.

16           Sec. 15. (1) The county treasurer shall distribute all  
17 revenue received from the Department of Revenue pursuant to section  
18 14 of this act to local taxing entities which, but for such  
19 personal property tax exemption, would have received distribution  
20 of personal property tax revenue from depreciable personal property  
21 used directly in the generation of electricity using wind as the  
22 fuel source.

23           (2) A local taxing entity's status as eligible for  
24 distribution under subsection (1) of this section shall not be  
25 affected when and if the net book value of personal property used

1 directly in the generation of electricity using wind as the fuel  
2 source becomes zero. A local taxing entity's status as eligible  
3 for distribution under such subsection shall be affected by the  
4 disposal of all of the exempt depreciable personal property used  
5 directly in the generation of electricity using wind as the fuel  
6 source.

7 (3) The distribution to each eligible local taxing entity  
8 shall be calculated by determining the amount of taxes that the  
9 eligible local taxing entity levied during the taxable year and  
10 dividing this amount by the total tax levied by all of the  
11 eligible local taxing entities during the year. Each eligible  
12 entity's resulting fraction shall then be multiplied by the revenue  
13 distributed to the county treasurer by the department to determine  
14 the portion of such revenue due each local taxing entity.

15 (4) The Department of Revenue shall not retain any  
16 revenue collected pursuant to sections 12 to 15 of this act for  
17 distribution, use, transfer, pledge, or allocation to or from the  
18 General Fund.

19 Sec. 16. Section 79-1018.01, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 79-1018.01 Except as otherwise provided in this section,  
22 local system formula resources include other actual receipts  
23 available for the funding of general fund operating expenditures  
24 as determined by the department for the second school fiscal  
25 year immediately preceding the school fiscal year in which aid

1 is to be paid. Receipts from the Community Improvements Cash Fund  
2 and receipts acquired pursuant to the Low-Level Radioactive Waste  
3 Disposal Act shall not be included. Other actual receipts include:

4 (1) Public power district sales tax revenue;  
5 (2) Fines and license fees;  
6 (3) Tuition receipts from individuals, other districts,  
7 or any other source except receipts derived from adult education,  
8 receipts derived from summer school tuition, receipts derived from  
9 early childhood education tuition, and receipts from educational  
10 entities as defined in section 79-1201.01 for providing distance  
11 education courses through the Distance Education Council until July  
12 1, 2008, and the Educational Service Unit Coordinating Council on  
13 and after July 1, 2008, to such educational entities;

14 (4) Transportation receipts;  
15 (5) Interest on investments;  
16 (6) Other miscellaneous noncategorical local receipts,  
17 not including receipts from private foundations, individuals,  
18 associations, or charitable organizations;

19 (7) Special education receipts;

20 (8) Special education receipts and non-special education  
21 receipts from the state for wards of the court and wards of the  
22 state;

23 (9) All receipts from the temporary school fund.  
24 Beginning with the calculation of aid for school fiscal year  
25 2002-03 and each school fiscal year thereafter, receipts from

1 the temporary school fund shall only include receipts pursuant  
2 to section 79-1035 and the receipt of funds pursuant to section  
3 79-1036 for property leased for a public purpose as set forth in  
4 subdivision (1) (a) of section 77-202;

5 (10) Motor vehicle tax receipts received on or after  
6 January 1, 1998;

7 (11) Pro rata motor vehicle license fee receipts;

8 (12) Other miscellaneous state receipts excluding revenue  
9 from the textbook loan program authorized by section 79-734;

10 (13) Impact aid entitlements for the school fiscal year  
11 which have actually been received by the district to the extent  
12 allowed by federal law;

13 (14) All other noncategorical federal receipts;

14 (15) All receipts pursuant to the enrollment option  
15 program under sections 79-232 to 79-246;

16 (16) Receipts under the federal Medicare Catastrophic  
17 Coverage Act of 1988, as such act existed on May 8, 2001, as  
18 authorized pursuant to sections 43-2510 and 43-2511 but only to the  
19 extent of the amount the local system would have otherwise received  
20 pursuant to the Special Education Act; ~~and~~

21 (17) Receipts for accelerated or differentiated  
22 curriculum programs pursuant to sections 79-1106 to 79-1108.03;  
23 and-

24 (18) Revenue received from the nameplate capacity tax  
25 distributed pursuant to section 15 of this act.

1                   Sec. 17. The Revisor of Statutes shall assign section 6  
2 of this act within sections 70-1001 to 70-1027.

3                   Sec. 18. Original sections 70-1001, 70-1001.01, 70-1013,  
4 70-1014, 70-1014.01, 76-710.04, 77-105, 77-202, and 79-1018.01,  
5 Reissue Revised Statutes of Nebraska, and section 13-518, Revised  
6 Statutes Supplement, 2009, are repealed.